ANWAG

Alliance of Nuclear Worker Advocacy Groups

Good Afternoon Dr. Markowitz and Members of the Board. My name is Terrie Barrie, Founding Member of the Alliance of Nuclear Worker Advocacy Groups. Thank you for allowing me the opportunity to provide these comments.

The EEOICPA Ombudsman released his 2018 Report to Congress a couple of weeks ago. The report includes recommendations to DEEOIC which will improve the program. I'd like to call your attention to a concern detailed on page 31 of the report, concerning First Responders.

> *"Over the years, individuals who worked (or had worked) as first responders approached us to complain that the SEM database did not list all of the buildings; all of the incidents; and/or all of the toxic substances they encountered in the course of performing their jobs."*

I researched the SEM for 25 of the major sites to see how many toxic substances are reported for firefighters. I found it astounding that, with the exception of the Hanford site, that the average number of toxic substances listed which a firefighter could have been exposed to is 22. 22! The average number of total toxic substances at sites other than Hanford is 1770.

According to the Ombudsman report, the First Responders suggested that "…it is time for this program to rethink its approach to compiling information in the SEM database about their exposures…:

ANWAG supports the First Responders request and encourages the Board to look into this problem.

I was happy to hear that DOL is instituting a Quality Assurance Program to review claims, although I have concerns that this will interfere with the Board's statutory responsibilities. I hope that this is the result of a federal court decision handed down last December, Adams v. DOL. The court remanded the case back to the DEEOIC. The case involves aspects of claim adjudication which the Board has also identified as problem areas. For instance, the claimant was previously approved for beryllium sensitivity. But despite that fact and the claimant's assertion that beryllium exposure caused, contributed to or aggravated her COPD, the claims examiner failed to list beryllium in the Statement of Accepted Facts to the industrial hygienist. The court also found that DEEOIC relied too heavily on the information in SEM.

But what I found most intriguing is the court's statement on "risk factor". From page 339,

> *DOL's Final Decision fails to have a rational connection between the facts and the ultimate choice made when it cherry-picks evidence supporting its decision and neglects to substantively confront the relationship between the elevation of risk and aggravation of a disease.*

I remember a discussion by the Board about how DEEOIC determines whether an exposure aggravated a disease or condition. In light of the court's decision perhaps the Board may be able to provide guidance to DEEOIC on whether an increased risk factor ***is*** related to the "aggravation" standard in the statute - not for this individual claimant but as an overall program policy. I will provide the link to the court's decision in my written comments.

I'm disappointed that the latest version of the Procedure Manual was not provided to the Board before the meeting, despite Ms. Leiton's statement during the Board's teleconference that it would be released the end of September. I have two concerns I'd like to bring to the Board's attention.

1 - How long have the claims examiners been using the new version?

2 - According to John Vance, personal physicians will now need to "validate" their understanding of the exposure.

The reason for these two concerns is that an AR came to me a couple of weeks ago that she was told the CE would feel better accepting the rationalized report from the treating physician after the CE had a toxicologist review the letter. It's important to note that the physician provided peer reviewed scientific studies supporting his position. I ask that the Board carefully review the change to the PM when it is released and weigh in on whether it is reasonable request.

I would also like to point out that SEM links lung cancer to beryllium exposure so perhaps the Board can keep this in mind if they review lung cancer claims not attributable to asbestos.

New Comments

ANWAG appreciates the labor-intensive work the Board has done reviewing claims. You have identified problems associated with the adjudication process as well as acknowledging when the claims examiner properly followed procedures.

The Advisory Board on Radiation and Worker Health has a similar review process for dose reconstructions. When ABRWH, through a blind review process, identifies and agrees that the dose reconstruction was inaccurate and the claim should have been compensated, NIOSH will correct the dose reconstruction and then resubmit it to DEEOIC. DEEOIC then reopens the claim.

There doesn't appear to be such a process for this Board. In fact, Ms. Leiton objected to the suggestion the Board made during the September 4, 2019 teleconference. Page 74 of the transcript,

> *There's a line between case adjudication and what we have to do and the processes we have to go through and your role in advising on general topics. So if we start getting into case by case, oh, we think you should have done it this way. First of all, that will have to be totally something that would be not public. And second of all, we'll take the information and r*eview *our cases, but we can't get into a debate with you guys about it, going back to you with all that.*

Our concern is obvious. In some cases, serious deficiencies such as ignoring the evidence in the case file could result in an approved claim. However, since the claimant is unaware that their claim has been reviewed by an independent body they are unable to request a reopening of their claim. I suggest that

DEEOIC, at the very minimum, inform the claimant that their case was audited and that they may want to consider requesting reopening the claim.

Thank you again for allowing me to submit these comments.

Terrie Barrie
Alliance of Nuclear Worker Advocacy Groups
November 25, 2019

Adams v. DOL
https://scholar.google.com/scholar_case?case=13880764543044765144&q=EEOICPA+federal+court+adams&hl=en&as_sdt=4006

Pg. 343 DOL neglected to honor this mandate by not explaining how it considered "risk factors" in its Order Denying Reconsideration.

SOAF pg. 327 DOL neglected to honor this mandate by not explaining how it considered "risk factors" in its Order Denying Reconsideration.

Toxic Substance: Beryllium

IDENTIFICATION	CAS: 7440-41-7 Aliases: Beryllium-9; Beryllium 9; Be-9; Be 9; Beryllium dust; Beryllium metal; Beryllium metallic; Beryllium, metal powder; Glucinium; Glucinum; HSDB 512; RCRA waste number P015; Beryllium and beryllium compounds; Beryllium and certain beryllium compounds; Beryllium and compounds; Beryllium compounds, n.o.s.; Beryllium compounds, n.o.s. [UN1566] [Poison]; Beryllium metal [Beryllium and beryllium compounds]; Beryllium powder; Beryllium [Beryllium and certain beryllium compounds]; Beryllium, elemental; Beryllium, powder; Beryllium, powder [UN1567] [Poison]; RCRA waste no. P015; UN1566; UN1567; Be Category: Metals
PROPERTIES	Physical: A hard, brittle, gray-white metal. The lightest structural metal known; can be fabricated by rolling, forging, and machining. Chemical: Resistant to oxidation at ordinary temperatures. Insoluble in water. Beryllium is a flammable solid that will ignite if its surroundings are on fire. Combustion yields beryllium oxide fume. Soluble in acids (except nitric) and alkalies.
DETAILED INFORMATION	Typical Uses: Used as a structural material in space technology; as a moderator and reflector of neutrons in nuclear reactors; as a source of neutrons when bombarded with alpha-particles; for special windows for X ray tubes; in gyroscopes, computer parts, inertial guidance systems; as an additive in solid-propellant rocket fuels; and in beryllium-copper alloys. [Hawley] Restrictions: Use of beryllium in fluorescent and neon lamp industries was banned in the 1960's. [Haz-Map]
SPECIFIC HEALTH EFFECTS (based on NLM Haz-Map Disease List)	*Only diseases covered by Part E are displayed in SEM.* **Chronic beryllium disease** Aliases: Chronic beryllium disease (CBD); Beryllium pneumoconiosis; Berylliosis **Lung cancer** Aliases: Bronchogenic carcinoma
RECORD HISTORY	Toxic substance profile last updated: Jun 25, 2018 (Note: Toxic substance/disease relationships may have changed after this date.)